

Attachment 1

**Verizon policies regarding provision
of UNEs and retail services
where adequate facilities do not exist**

Verizon New England Inc.

State of Rhode Island

Docket 3363

Respondent: Tom Maguire

Title: Vice President - Network
Services Group

REQUEST: Rhode Island Public Utilities Commission, Set 1

DATED: August 15, 2001

ITEM: PUC-CON 1-11 The following questions are in reference to the attached letter appearing on the Verizon.com website: "DS1 and DS3 Unbundled Network Elements Policy", July 24, 2001 (downloaded from http://www22.verizon.com/wholesale/frames/generic_frame_cast0,2656,industry_letters,00.html, on August 1, 2001).

- a. Please provide a copy of the letter.
- b. The letter states (para. 2) that "Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers." Please provide a legal citation to every statute or ruling which Verizon believes supports that statement.
- c. "Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element. ." Please provide a legal citation to every statute or ruling which Verizon believes supports that statement.
- d. Does Verizon-RI believe that the statements referenced in parts a. and b. above apply to its operations in Rhode Island? If the answer is anything but an unqualified yes, explain in detail how its legal obligations in Rhode Island differ from those holding in other states, relative to each of these statements.

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- c. Has Verizon or Verizon-RJ ever issued a statement concerning its policies concerning the construction of new DS1 and/or DS3 facilities relative to its provision of retail services, including but not necessarily limited to Flexpath T-1 exchange access lines/trunks? If the answer is yes, please provide a copy of that statement. If the answer is no, please describe in detail the policy that Verizon-RJ applies to orders for retail Flexpath T-1 exchange access lines/trunks when facilities are not initially available to fulfill the order.

REPLY:

- a. Please see the letter attached.
b. The FCC's definition of the local loop network element supports the position that ILECs are not required to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers nor to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element. Under 47 C.F.R. § 51.319(a), ILECs must provide requesting carriers access to the local loop and subloop. Subsection 51.319(a)(1) of the FCC's regulation provides that

[t]he local loop network element is defined as "a transmission facility between a distribution frame ... and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent IEC." The local loop network element includes all features, functions and capabilities of such transmission facility. Those features, functions and capabilities include, but are not limited to, dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as [DSLAMs]), and line conditioning. (emphasis added)

As this provision indicates, the "features, functions and capabilities" that a CLEC may avail itself of include attached electronics, meaning electronics already connected to the wire or fiber, in contrast to unattached electronics.

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REPLY: PUC-CON
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The fact that Verizon RI must condition wire facilities, including conditioning them so that they can pass signals at a DSL rate, similarly does not mean Verizon RI must add or attach electronics to a copper or fiber facility. Under Subsection 51.319(a)(3)(i) of the FCC's regulations,

Line conditioning is defined as the removal from the loop of any devices that may diminish the capability of the loop to deliver high speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to, bridge taps, low pass filters, and range extenders. (emphasis added)

Nothing in this definition, or in the FCC's related discussion in the *UNE Remand Order*, suggests that an ILEC must, as part of its line conditioning obligations, add or attach electronics to a copper or fiber facility.

More broadly, the 1996 Act only requires incumbent carriers to unbundle their existing network, not to construct network elements simply to make them available on an unbundled basis to competing carriers. As the Eighth Circuit explained, "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network - not to a yet unbuilt superior one." *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), appealed on other grounds. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 737 (1999).

- c. Please see the Company's reply to part b above.
- d. The statements referenced in parts a. and b. as well as c. above apply to Verizon's operations in Rhode Island.
- e. Verizon RI objects to this request on the grounds that it would require a burdensome and time-consuming record search. Notwithstanding its objection, Verizon RI responds as follows. Verizon RI is not aware of any written statement(s) issued to retail customers concerning its construction policies.

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July 24, 2001

DS1 and DS3 Unbundled Network Elements Policy

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

→ In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filed, but the provisioning interval is longer than normal. At the same time, → Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a *perceived obligation* to construct new facilities.

→ Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

→ Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment

and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.

Verizon New England Inc.

State of Rhode Island

Docket 3363

Respondent: Tom Maguire

Title: Vice President - Network
Services Group

REQUEST: Rhode Island Public Utilities Commission, Set 1

DATED: August 15, 2001

ITEM: PUC CON 1-12 For each month beginning in January 2000 and extending to the most recent month for which data is available, provide the following information. In your response, please provide a breakdown by wire center, if available.

- a. The total number of orders for Flexpath T-1 exchange access lines/trunks which were rejected due to a determination by Verizon-RI that facilities were not available.
- b. The total number of orders for T-1 Special Access lines which were rejected due to a determination by Verizon-RI that facilities were not available.
- c. The total number of orders for T-1 UNE loops which were rejected due to a determination by Verizon-RI that facilities were not available.

REPLY: Verizon RI does not track the reason(s) why a retail or wholesale order may be rejected (e.g., due to a lack of facilities). As a general matter, retail orders are not rejected due to a lack of facilities because Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction. Like its retail and carrier access customers, Verizon's CLLEC customers may request Verizon to provide DSL and DS3 services pursuant to the applicable state or federal tariffs.

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Attachment 2

**Verizon *Ex Parte* letter
CC Docket No. 01-338
October 18, 2002**

W. Scott Randolph
Director – Regulatory Affairs



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October 18, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Ex Parte: CC Docket Nos. 01-338, 96-98, and 98-147

Dear Ms. Dortch:

At the request of staff, Verizon provides this further clarification on Verizon's high capacity loop provisioning practices.

The dispute about Verizon's provisioning policy is best understood in the context of the larger debate about whether the Commission should continue to require ILECs to provide high capacity loops such as DS-1s and DS-3s on an unbundled basis. While CLECs historically have invested heavily in their own fiber optics and other facilities to provide high capacity services, more recently, they are increasingly demanding unbundled elements instead, even in the most competitive metropolitan areas. In fact, carriers even demand unbundled elements in locations such as the K Street corridor in downtown D.C., where any motorist can testify to the scope of competitive facilities deployment. And those carriers increasingly go so far as to demand that Verizon build new high capacity facilities solely to make them available as unbundled elements at prices that are below what they (or any carrier) could build them for.

The threshold question in this proceeding is whether high capacity loops should be unbundled in the first place. As Verizon has explained at length elsewhere, as a general matter, they should not.¹ Indeed, competing carriers already have deployed extensive high capacity facilities of their own. And where they have not yet done so, those carriers have readily admitted that they have successfully entered the market using special access services from incumbents or

¹ See Letter from William P. Barr to Honorable Michael Powell dated October 16, 2002.

other providers. Under these circumstances, making it clear that these high capacity facilities do not have to be unbundled will restore incentives for carriers to invest in facilities of their own.

Still, until the Commission decides this threshold issue, Verizon's policy for provisioning unbundled network elements complies fully with the Act. Pursuant to that policy, Verizon will provide unbundled network elements, including DS-1s and DS-3s, where the facilities necessary to provision the service requested exist and are currently available. Furthermore, although Verizon is not required to construct network elements at the request of a CLEC, Verizon does perform some construction work to provide high capacity loops even where not all of the facilities necessary to provision the service are available in Verizon's assignable inventory.

While we understand that some CLECs have complained to the Commission about this policy, no one seriously claims that Verizon is required to construct network facilities just to make them available to CLECs as UNEs. Nor could they. The Commission has made clear that, "the Act does not require [Verizon] to construct network elements ... for the sole purpose of unbundling those elements for ... other carriers."² And the Commission has steadfastly adhered to this basic principle.³ This ruling, moreover, is entirely consistent with and, indeed, required by the portion of the Eighth Circuit's decision in *Iowa Util. Bd. v. FCC* that has never been challenged, where the Court explained that "[s]ubsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network" As a result, there is no real question that Verizon is not required to deploy new copper or fiber cable or to install new equipment in its central offices or elsewhere solely to unbundled the new facilities or equipment. That question has been definitively resolved.

The only real question in this debate then is where to draw the line in terms of defining whether or not facilities exist and what constitutes construction. In that regard, Verizon has adopted reasonable policies under which Verizon has and will continue to do more than is required by the Act.

When a CLEC places an order for a UNE loop, Verizon checks to determine whether the facilities necessary to provision the service exist and are available to provision the order. If the necessary facilities exist, Verizon will provision the UNE loop requested. Where the facilities necessary to provision the service requested do not exist, however, construction is required.

Although Verizon is not required to do so, Verizon does perform some construction work in order to provide CLECs high capacity loops where facilities do not exist. This work includes ordering and installing line cards in existing multiplexers and equipment shelves at the central office and at the customer's location; cross connecting existing common equipment, such as multiplexers, to the copper or fiber facility being used; placing doublers in an existing apparatus case where necessary to provision the service; or installing a network interface device at the customer's premise. In addition, when construction of the facilities necessary to provision the service requested is already planned, Verizon will provision the UNE requested once construction of those facilities has been completed.

² See Virginia Arbitration Non-Cost Order ¶ 468.

³ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 451 (1996) (limiting "the provision of unbundled interoffice facilities to existing incumbent LEC facilities."); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696, ¶ 324 (1999) (same).

Verizon, however, does not (and is not required to) construct network elements solely for the purpose of unbundling those elements where the construction work involves installing new copper or fiber cabling, equipment, or electronics. Although some CLECs have suggested that this work involves relatively minor upgrades or modifications to the network; in fact, as the descriptions below indicate, substantial construction activity is required often involving multiple work groups, including third-party vendors, and an additional outlay of capital. Specifically, the following situations require construction work that Verizon is not required to (and does not) undertake:

B. DS-1 Over Copper

1. *No Available Copper Spares.*

In the absence of available fiber facilities, spare copper facilities must exist before Verizon can provision a DS-1 loop. Although Verizon will make reasonable attempts to clear defective cable pairs that exist in the end user's service terminal, if Verizon cannot clear defective facilities and if no other spare facilities exist, construction would be required to add copper facilities at the end user location before a DS-1 could be provisioned. To add these facilities, Verizon would have to actually lay copper cable to the end user's location, work that no one seriously argues Verizon is required to do.

This construction work includes planning, designing, and installing or rearranging copper cables to the end user's location. Planning engineers identify the nearest available copper feeder facilities that can be allocated to the end-user location. The Planning engineer will go as close to the source of the copper feeder facilities, typically the central office, as necessary for the installation of new copper facilities to the end user location. Design engineers then do the detailed design work required to extend those feeder facilities, and to install any additional copper distribution facilities that might be required, to the end users location. They also identify structural requirements – manholes, pole licensing/placement/rearrangements, building entrance conduit, terminal space requirements, right of way requirements, etc. – for the placement copper facilities.

Once the detailed design is complete, physical construction can begin and typically includes:

- Securing access to manholes, poles and/or buried cable;
- Constructing new manholes, poles and conduit;
- Securing permits and/or rights of way;
- Establishing a safe work area in public rights of way;
- Installing the cable in or on the new/existing structure;
- Installing terminals; and
- Splicing cable pairs in manholes, on poles, in buried enclosures and in buildings

This construction activity creates new copper facilities to the end user location. Without this construction work, the facilities necessary to provision the service do not exist and cannot be unbundled.

Between January and June 2002, 12% of the total number of CLEC high capacity loop orders rejected in the former Bell Atlantic South states⁴ were rejected for this reason.

2. No Apparatus/Doubler Case.

For DS-1 loops greater than 12,000 feet, a doubler, which is also known as a repeater, regenerator, or range extender, is required to amplify the HDSL signal. Doublers are often used to "boost" a signal traveling over long distances. These doublers are housed in an apparatus or doubler case that is spliced into the loop at a location where the electrical properties of the copper loop no longer support the HDSL signal. The exact location is dependent on the loop make up (gauge, average ambient temperature and sheath type) of the cable pair but is typically 9000-12,000 feet. Accordingly, if the cable pairs or loop available for assignment to the end user's serving terminal are greater than 12,000 feet and do not contain an apparatus case, construction work would be required to add this new equipment before a DS-1 could be provisioned.⁵

The construction work required to install an apparatus case is complex. As an initial matter, the cable sheath containing the pairs must be secured and spliced into. The work required to do this depends on the physical location (building, street, right of way) and the cable plant type (aerial, underground, direct buried) of the apparatus design location. Aerial cable is typically accessed using bucket trucks after complying with any local traffic control requirements.⁶ Direct buried cable is accessed, where possible, through splice enclosures that come out of the ground at splice points determined by the cables' original design/placement. If the apparatus design location does not coincide with a nearby existing splice location, the cable sheath must be marked (via Dig Safe procedures) and exposed, consistent with local traffic control regulations. Underground cable sheaths must be accessed through a manhole. In addition to complying with local and state requirements and regulations,⁷ the manhole must be pumped and filtered of any water and sediment and then tested and cleared of any hazardous materials or gases. Provided there are no safety issues, the manhole can be entered and the splicing work can proceed.

Once the cable sheath is secured, access to the cable pairs within the sheath is accomplished either by entering an existing splice (if one exists) or splicing into the cable – cutting into the cable sheath directly and then pulling slack or adding additional slack cable to create a

⁴ Former Bell Atlantic South includes New Jersey, Pennsylvania, Delaware, District of Columbia, Virginia, West Virginia, and Maryland. Verizon does not have readily available data for the former Bell Atlantic North states but notes that the same policies apply in the former Bell Atlantic North states.

⁵ In addition, it is also likely that load coils would need to be removed.

⁶ Most municipalities require traffic control and a police detail when placement of the vehicle will impede traffic flow.

⁷ Most municipalities require a police detail for local traffic control before the work can proceed. Similarly, most states require that the Manual on Uniform Traffic Control Devices ("MUTCD") be adhered to. In addition, most States have a Department of Environmental Management requirement to test sediment contents for contaminants. If hazardous materials are present, special removal processes may need to be followed, and Verizon typically contracts this work out to third parties. If no hazardous materials are found, pumping and filtering of the manhole may proceed.

new splice. If the cable is pressurized, as is the case with most underground cable, the sheath also will need to be buffered before this work can begin.⁸

Once the relevant cable pairs within the sheath have been secured, a new apparatus case must be mounted. This apparatus case housing is typically mounted to a wall, pole, or buried enclosure, and the cable stubs to the equipment are connected to the cable pairs in the new splice. Once that is done, Verizon then must order and install the necessary doublers before the service can be provisioned. This construction work, therefore, requires the installation of new equipment, something Verizon is not required to do. And without this construction work, the facilities necessary to provision the service do not exist and cannot be unbundled.

Between January and June 2002, 45.2% of the total number of CLEC high capacity loop orders rejected in the former Bell Atlantic South states were rejected for this reason.

3. *No Central Office or Remote Terminal Repeater Equipment.*

To provision a DS-1 copper loop facility, there also must be an HDSL Terminal Unit (HTU), also known as a repeater, in both the central office and at the end user's remote terminal location. An (HTU) physically terminates an HDSL connection at both the Central Office and the Remote Terminal and is installed in a repeater shelf. If there are no spare slots in the repeater shelf, in either the central office or the remote terminal, construction work would be required to add new repeater equipment before a DS-1 loop could be provisioned.

This construction work includes planning, designing, and installing new repeater equipment in a Central Office and/or Remote Terminal relay rack, a 10 to 12 foot steel equipment mounting structure.⁹ The physical work includes installing the equipment into the relay rack and running cable to appropriate termination points – Digital Cross Connect (DSX) Panels, Digital Access and Cross Connect Systems (DACS), and Distribution Frame/Terminal Blocks – within the Central Office and at the Remote Terminal location.¹⁰ Without the addition of this new equipment, the facilities necessary to provision the service do not exist and cannot be unbundled.

Between January and June 2002, 4.6% of the total number of CLEC high capacity loop orders rejected in the former Bell Atlantic South states were rejected for this reason.

4. *No Riser Cable or Buried Drop.*

Verizon adheres to the Commission's Demarcation Point and Minimum Point of Entry rules to determine the availability of riser/drop facilities. In the event there is no riser cable – vertically placed cable – to a customer location in a multiple floor building, this cable likewise would have to be installed before the facilities necessary to provision the service requested would exist.

⁸ Buffering is a procedure where a temporary bypass air pipe is installed to permit uninterrupted airflow to the field side of the splice in order to prevent cable failures due to water intrusion while the splice work is in progress.

⁹ This equipment must be ordered, generally on a 30 day EFI (engineer/furnish/ install) interval, and is installed using outside vendors. The relay rack must also have spare capacity. In the event capacity in the relay rack is exhausted, a new relay rack must be planned, designed and constructed.

¹⁰ This may include running wire to termination points on different floors within the central office. In addition, space constraints at Remote Terminal locations are often limiting factors in the construction of additional capacity.

In many cases, however, there is no way to physically provide cable continuity to the customer. In some buildings, Verizon may not have access to install new riser cable. This can occur when the tenant/end user is located on a floor above the Demarcation Point. Similarly, when a customer has no building entrance structure (pole line or underground conduit) and is served with an existing direct buried facility and that facility is exhausted, there is no physical way to provide additional capacity to the location until those structures are constructed by the property owner.¹¹ Verizon would then need to build cable facilities from the Rate Demarcation Point to the nearest available spare capacities in much the same way as outlined in part A.1 above. Again, this work requires laying cable, which Verizon is not required to do.

Between January and June 2002, 0.4% of the total number of CLEC high capacity loop orders rejected in the former Bell Atlantic South states were rejected for this reason.

B. DS-1 and DS-3s Over Fiber.

5. *No Fiber or Multiplexer.*

To provision a DS-1 loop over fiber, there must be fiber cable and multiplexer capacity in both the central office and at the end user's location. If there is no fiber cable or multiplexer capacity, in either the central office or at the end user's location, construction would be required to add new fiber cable or multiplexers before the DS-1 or DS-3 could be provisioned.

To install fiber cable requires securing access to structures in the underground and aerial plant. This includes manhole and pole procedures as outlined in A.3 above. Fiber optic cable must then be installed in, or on, those structures similar to the physical construction procedures outlined in A.1 above.

Fiber facilities also require specialized splicing operations (fusion splicing, "clean room" conditions) to establish continuity in the fiber. The fiber is terminated in specially designed fiber distribution bays in the central office and fiber trays at the customer location. Once installed, the fiber must be accepted with a series of Optical Time Domain Reflectometer ("OTDR") equipment. Once accepted, the fiber must be connected to an optical multiplexer.

Construction of a new multiplexer at the central office location requires adequate space in an available relay rack. Similarly, installation of a new multiplexer at the end user's location requires both adequate space and a commercial power source for the multiplexer. The installation of a new multiplexer in the central office is performed by third party vendors and is similar to the process described in A.3 above including, ordering the equipment and appropriate common cards, installing the equipment and cards, cabling to the appropriate intermediate termination points in the central office (DSX panels, etc), testing, and updating of inventory systems. The installation of a multiplexer in a remote terminal or end user location involves a similar procedure and is performed by Verizon technicians. Without this construction work, the facilities necessary to provision the service do not exist and cannot be unbundled.

Between January and June 2002, 30.5% of the total number of CLEC high capacity loop orders rejected in the former Bell Atlantic South states were rejected for this reason.

¹¹ Pole line Rights of Way (and applicable construction charges), or conduit and/or trenches would have to be delivered by the property owner.

6. No Capacity for the Service Requested on Existing Multiplexer.

Multiplexers deployed in Verizon's network typically may be configured to serve, among other things, both DS-1 and DS-3 services. When multiplexers are initially deployed, an initial muldem on the multiplexer is wired to support either DS-1 or DS-3 services.¹² As orders for that service are received, line cards are placed in slots on the multiplexer to provision the order. Although Verizon is not required to do so, where there are spare slots for the service requested Verizon orders and installs the line cards necessary to provision CLEC UNE loop orders. Once the slots for the line cards are filled, however, no more orders for service can be provisioned until a new muldem is constructed, wired for service, and the line card slots are inventoried.

The type of construction required to create additional multiplexer capacity varies depending upon whether the muldem is configured to serve DS-1 or DS-3 services. To install a muldem to support DS-1 loop orders, significant work is required at both the central office and remote terminal locations. The work is similar at each location. First a Telephone Equipment Order (TEO) is developed and issued to a vendor for the central office work. An Engineering Work Order (EWO) is similarly issued for the remote terminal location, which is performed by Verizon technicians. Central office plug-ins are ordered and the cabling work is scheduled with the vendor. Cable is run from the multiplexer to a DSX panel where 56 wiring terminations are made on the panel. Similar work is done at the remote terminal location.¹³ Until this construction work is performed, the facilities necessary to provision the services do not exist and cannot be unbundled.

Between January and June 2002, 3.5% of the total number of CLEC high capacity loop orders rejected in the former Bell Atlantic South states were rejected for this reason.¹⁴

Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,



W. Scott Randolph

cc: Tom Navin Brent Olsen
 Jeremy Miller Mike Engel

¹² A muldem is a multiplexer/demultiplexer combination. A typical multiplexer has multiple muldemers. When Verizon installs a multiplexer in its network, it may not wire and activate all muldemers in the multiplexer. As additional multiplexer capacity is needed, additional muldemers in the multiplexer need to be wired and activated. This work is performed both by outside vendors and by Verizon technicians.

¹³ To install a muldem to support DS-3 loop orders, similar cabling work is required at both the CO and remote terminals but a different plug in configuration is required for DS3 service in a multiplexer.

¹⁴ 3.8% of the rejected orders are not categorized into one of these categories.

Attachment 3

New Hampshire Public Utilities Commission

Docket No. 02-110

Order No. 24,265

January 16, 2004

Excerpt

DT 02-110

VERIZON NEW HAMPSHIRE

Investigation into Cost of Capital

Order Establishing Cost of Capital

O R D E R N O. 24,265

January 16, 2004

APPEARANCES: Victor D. Del Vecchio, Esq. for Verizon New Hampshire; Swidler Berlin Shereff Friedman, LLP by Philip J. Macres, Esq. and Eric J. Branfman, Esq. on behalf of Freedom Ring Communications, LLC d/b/a BayRing Communications; Laura Gallo, Esq., Kenneth W. Salinger, Esq., and Katherine A. Davenport, Esq. for WorldCom, Inc. (now MCI Communications, Inc.); F. Anne Ross, Esq. for the Office of the Consumer Advocate on behalf of residential ratepayers, E. Barclay Jackson, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

The New Hampshire Public Utilities Commission (Commission) initiated this docket, by Order of Notice dated June 28, 2002, to determine the appropriate cost of capital for Verizon New Hampshire (Verizon) and to examine whether recurring TELRIC¹ rates should be modified to take into account a revised cost of capital. Motions to intervene in the matter were filed by Otel Telekom, Inc. (Otel); Global NAPS, Inc. (Global NAPS); Conversent Communications of New Hampshire, LLC (Conversent); CTC Communications Corporation (CTC), Dieca Communications Inc.

¹ TELRIC, or total element long run incremental cost, has been approved by the Federal Communications Commission (FCC) as the appropriate methodology for establishing rates for unbundled network elements.

of capital. There is no requirement under FCC rules or the TAct that a separate cost of capital be specified for UNE rates.

We conclude that it is reasonable to view the company as a whole to arrive at a weighted average cost of capital. This overall cost of capital will be utilized by Verizon for jurisdictional filings that require cost studies that call for an estimate of the cost of capital. More specifically, we will use this overall weighted average cost of capital to modify TELRIC rates; we will also use this overall weighted cost of capital in any future retail rate case and in examining Verizon's earnings going forward.

B. UNE Risk Premium

There are several infirmities with regard to the 5.48 percent risk premium Verizon proposes to add to its overall cost of capital which prevent us from adopting it. In particular, the method advanced by Verizon's witness Dr. Vander Weide to derive the risk premium is inapplicable to the UNE situation.

In the article cited by Dr. Vander Weide to support his UNE risk premium (Copeland and Weston), the authors developed a method to estimate the appropriate cost (and associated internal rate of return) for a cancelable equipment lease, as opposed to a non-cancelable equipment lease. According to Copeland and Weston, if a lessee can cancel an equipment lease, the lessor must adjust the lease fee upwards

from a non-cancelable lease fee to reflect any uncertainty as to the likely economic value of the property at the times when the lessee may exercise this option. The risk is on the lessor, and the required lease payments and internal rate of return must reflect this assumed risk. The authors point out that from the lessor's point of view, a cancelable lease is equivalent in value to a pure financial lease (which cannot be cancelled and which, according to the authors, has a cost equal to the cost of debt), minus an American put option with a declining exercise price. *Id.*, at 60.

Dr. Vander Weide calculated his 5.48% risk premium drawing on the arguments developed in the paper, and added it to his estimate of 12.45% weighted average retail cost of capital, to arrive at his recommended 17.93% weighted average UNE cost of capital. Whatever the merits of the cancelable lease analogy to the UNE line of business, we find that it is not appropriate to use the Copeland/Weston formulas to develop a UNE risk premium, and add the resulting premium to an overall cost of capital to develop a separate rate of return for UNE leasing.

Second, use of the Copeland/Weston theory in the UNE context implicitly assumes that it is only the action of the lessee in demanding cancelability that subjects Verizon to the risk of cancellation. As the CLEC parties pointed out, it is Verizon that restricts CLEC UNE leases to one-month terms, and

declines to offer longer term non-cancelable UNE leases. Presumably this is a result of a judgment by Verizon that its risk is decreased, not increased, by shorter terms, notwithstanding the associated exposure to increased risk of CLEC discontinuance of service.

The analogy between Copeland/Weston and the UNE line of business breaks down further as the value of the premium depends fundamentally on the investment required to serve the lease (Version Att. A, p. 65). Copeland/Weston state that a higher investment expense produces a higher premium (*id.*, pp. 64-5). However, as we have noted above, Verizon is not required to incur investment expenses explicitly for CLEC lines of business.

In addition, as stated in footnote 6 of Copeland/Weston, the lessor must, when faced with a cancellation of a lease, either "a) sell the asset at market value, or b) lease it again at a lower rate." We find neither of these scenarios persuasive for the actual business of a regulated provider of UNEs. We note that the possibility of the leased asset returning to the retail side of Verizon's business and earning a higher return than the original UNE lease is inappropriately excluded from the application of Copeland/Weston to UNEs.

Finally, no reasonable basis has been advanced in this case to apply a cancelable lease analogy to the UNE business, as opposed to the retail business. With the exception of individual long term contracts or special tariffs, none of Verizon's customers, wholesale or retail, are bound to remain with Verizon. Arguably, any premium that may apply to reflect the cancelable nature of the use of Verizon's facilities applies to retail service as well as wholesale service. However, as we note above, we have no basis on this record to differentiate the risk of retail and UNE business. In any event, the risk of revenue loss from demand reductions is captured in the overall rate of return, properly set, as is all risk facing the firm.

The Copeland/Weston argument, while perhaps sound for the purpose for which it was conceived, is not appropriate for application to the UNE business. For these reasons, it would be inappropriate to add the proposed premium to the UNE prices, and we decline to do so.

C. Capital Structure

In *Appeal of Conservation Law Foundation of New England*, 127 N.H. 606 at 636, 507 A.2d 652 (1986), the New Hampshire Supreme Court opined that in setting a reasonable rate of return for a regulated company, the Commission must look both at capital costs and comparable risks outside the company and also at the "actual circumstances" of the company. *Id.* at 635.